classification is performed on a case-by-case basis. The recommended revision is believed to codify existing practice.

§ 22.123(b)

NPRM: (b) *Developmental.* Applications are major if they request a developmental authorization or a regular authorization for facilities operating under a developmental authorization.

Recommendation:

(b) *Developmental.* A request for developmental authorization will be classified as major if the application would be classified as major under this section if it had been non-developmental. Examples of developmental filings that would be considered major are:

(1) Requests for developmental authority to operate a transmitter for the purpose of developing a new Public Mobile Service or technology not regularly authorized under this Part. *See* § 22.409.

(2) Requests for authority under Subpart D to conduct field strength surveys outside the requesting party's protected service area or to provide a trial period during which a licensee may conduct tests to determine whether a particular facility or facilities can operate (outside the requesting party's protected service area) without causing excessive interference to existing services. This paragraph does not apply to requests which are accompanied by written consent from existing co-channel licensees within the relevant coordination distances for the service involved in the directions affected by the developmental operations.

(3) Requests for developmental authority to operate 43 MHz paging channels and to convert such channels to regular authorization at the end of the developmental period pursuant to § 22.411.

(4) Requests for developmental authorization of 72-76 MHz fixed transmitters within 16 Kilometers (10 miles) of the antenna of any full service TV station transmitting on TV Channel 4 or 5 and to convert such developmental authority to permanent authorization pursuant to § 22.413.

(5) Requests for developmental authorization of 928-929 MHz and 952-960 MHz fixed transmitters in point-to-multipoint systems at locations that are short-spaced (*e.g.*, do not meet the 113 Kilometer (70 mile) separation requirement of § 22.625) and to convert such developmental authority to permanent authorization pursuant to § 22.415.

(6) Requests for developmental authorization of meteor burst systems subject to § 22.417 and to convert such authority to permanent authorization pursuant to § 22.417(b).

Discussion:

In some instances, initial requests for developmental authority and requests to convert such authority to permanent authorization should not be considered major. In the Cellular Radiotelephone Service, the Commission currently grants developmental authority to operate certain non-type accepted equipment as minor applications if they would not otherwise be considered major under proposed § 22.123(e)(2). BellSouth recommends the introductory paragraph to this subsection be inserted to provide carriers with notice and the Commission with flexibility in determining which developmental filings will be considered major. Developmental authorizations which are currently considered major (*see* subsections (b)(3)-(6) above) are listed for clarity and to make proposed § 22.123 all inclusive consistent with BellSouth's recommended amendments to this rule section.

§ 22.123(e) Channel usage.

NPRM: (e) *Channel usage.* Filings are major if they would affect channel usage as follows:

(1) *Paging and Radiotelephone, Rural Radiotelephone.* In the Paging and Radiotelephone and Rural Radiotelephone services, filings are major if they:
* * * * *

Recommendation:

Subsection (e) should be deleted and subsection (e)(1) be designated subsection (e).

Discussion:

Combining major filings in the paging, rural radio, cellular, air-ground and offshore services under the heading "channel usage" is confusing. In the Cellular Radiotelephone Service (proposed § 22.123(e)(2)) amending an application to increase a carriers' CGSA is major. However, classifying it as major because it "affects channel usage" has little meaning in the cellular context. Thus, BellSouth recommends that subsection (e) be eliminated and each of the listed radio services be designated a separate a new subsection.

In the following comments on subsections of (e)(1), BellSouth has referenced their existing section numbers, which would ultimately change after implementing the deletion of current section (e) and renumbering subsection (e)(1) as the new section (e).

§ 22.123(e)(ii)(E)

NPRM: (E) change the technical proposal substantially from that which was coordinated with other users pursuant to § 22.150.

Recommendation:

Change subsection number to "(e)(1)(ii)(F)."

Discussion:

This is the second consecutive subsection numbered (E), a typographical error.

§ 22.123(e)(2) Note — as discussed under § 22.123(e), (e)(2) should be designated (f) and all subsections renumbered accordingly. However, for clarity, Bellsouth here references this section as designated in the NPRM.

NPRM: *Cellular Radiotelephone.* In the Cellular Radiotelephone Service, filings are major if they:

* * *

(B) expand the CGSA of an existing cellular system to include area outside of the cellular market area.

Recommendation:

Amend subsection (B) by adding the following citations immediately following the final period in the sentence:

See §§ 22.137(c); 22.911(c).

Discussion:

BellSouth agrees that expanding the CGSA of an existing system to include areas in an adjacent market is major; however, for clarity, BellSouth recommends that the above citations be added. Proposed § 22.911(c) defines the parameters for claiming CGSA extensions into an adjacent market and proposed § 22.137(c) sets out the application procedures for acquiring CGSA area through partial assignment.

NPRM: Not present [Recommended new subsection]

Recommendation:

Add subsection (C):

(C) expand the service area boundary of an existing cellular system to include area outside of the cellular market area, except in accordance with an agreement pursuant to § 22.912(a).

Discussion:

Proposed new subsection (C) should be added to clarify that applications proposing service area boundary extensions are classified as major, except those proposed in accordance with an agreement between the adjacent market licensees. The proposed new subsection is consistent with § 22.912(a) governing extensions pursuant to agreement. *See also* BellSouth's recommended revision to § 22.912 consistent with the current § 22.903(d). In the unserved area proceeding the Commission adopted current § 22.903(d)(2) defining contract extensions (*see* proposed § 22.911 and § 22.912) and recognized that applications filed with service area boundary extensions pursuant to contract were considered permissive (or minor). *See* 47 C.F.R. § 22.9(d)(7)(iii). Further, when the licensees in two adjoining markets operating on the same frequency band agree to service area boundary extensions, the 30 day public notice period is not necessary. Thus, subsection (C) should be added to continue to classify extensions made pursuant to agreement with adjacent licensees as minor. Further, BellSouth has deleted the use of the term "contract" and replaced it with the term "agreement" to allow for less formal understandings between adjacent licensees.

§ 22.125 Applications for special temporary authorizations.

NPRM: Such requests should be filed in time to be received by the Commission at least 10 days prior to the date of proposed operation or, where an extension is sought, 10 days prior to the expiration date of the existing STA. A request received less than 10 days prior to the desired date of operation may be given expedited consideration. . . .

Recommendation:

Amend to read as follows:

Such requests should be filed at least 10 days prior to the date of proposed operation. Where an extension is sought, the request must be filed on or before the expiration date of the existing STA. A request filed less than 10 days prior to the desired date of operation may be given expedited consideration. . . .

Discussion:

The proposed rule requires that a request be "received by the Commission" at least 10 days prior to the date of proposed operation. The phrase "received by the Commission" is ambiguous. It is unclear whether the phrase refers to receipt in Pittsburgh, PA or receipt in Washington, DC. The proposed rule should be rewritten to replace all references to "received" with "filed."

Further, STAs are often filed while licensees are awaiting grant of applications for permanent facilities. As this grant may occur in the 10 day period prior to the STA's expiration, it is a waste of Commission and industry resources to require extension requests to be filed 10 days prior to expiration.

§ 22.125(b)

NPRM: [The proposed rule sets forth procedures for requesting special temporary authority.]

Recommendation:

Amend to read as follows:

(b) *Emergency Operation.* During a period of emergency in which normal communications facilities are disrupted as a result of hurricane, flood, earthquake or disaster, a licensee in the Public Mobile Services may implement temporary measures to restore normal communications without prior Commission approval under the following conditions:

(1) *Paging and Radiotelephone Service.* Licensees in the Paging and Radiotelephone Service may replace, relocate, or modify existing facilities pursuant to paragraph (b) provided the service and interfering contours of these temporary measures are contained wholly within previously authorized contours.

(2) *Cellular Radiotelephone Service.* Licensees in the Cellular Radiotelephone Service may implement temporary measures pursuant to paragraph (b) provided that all resulting contours are contained within the previously authorized CGSA or, in markets where the five year fill-in period has not expired, the cellular market boundary.

(3) *Report required.* Once normal communications have been restored, licensees must provide the Commission with a report detailing the temporary measures used to restore communications.

(c) *Limit on STA term. . . .*

Discussion:

The devastation of Hurricane Andrew has made clear that licensees should be given additional flexibility to restore normal communications in emergency situations. BellSouth proposes modifications to the proposed rule to provide additional flexibility consistent with proposed §§ 22.163, 22.165.

§ 22.129 Agreements to dismiss applications, amendments or petitions to deny.

NPRM: Not present — Rules governing cellular renewals

Discussion:

Language regarding renewal applicants was adopted in the FCC's renewal proceeding, *Cellular Renewal Proceeding*, 7 FCC Rcd. 719 (1992) and appears to have been inadvertently omitted from the NPRM. BellSouth has filed comments in the renewal proceeding and feels that it is inappropriate to comment on proposed § 22.129 until all issues raised in Docket 90-358 have been resolved.

§ 22.137 Assignment of authorization; transfer of control.

NPRM: Authorizations in the Public Mobile Services may be assigned by the licensee to another party, voluntarily or involuntarily, directly or indirectly, or by transfer of control of a corporate licensee holding such authorizations, only upon approval by the Commission. The assignee is responsible for ascertaining that the station facilities are and will remain in compliance with the terms and conditions [of the] authorization to be assigned.

Recommendation:

Amend introductory paragraph to read:

Prior Commission consent is required for assignment of authorizations and transfers of control of licensees and permittees, including *de facto* and *de jure* changes in ownership and control. Whether a given transaction constitutes a change in ownership and control requiring consent is determined on a case-by-case basis, considering all relevant facts and circumstances. A change from less than 50% ownership to 50% or greater ownership will always be deemed a change in ownership or control requiring prior Commission consent. Upon consummation of an assignment or transfer, the licensee as it is then constituted is responsible for ascertaining that the station facilities are and will remain in compliance with the terms and conditions of the authorization that was the subject of the assignment or transfer.

Discussion:

The recommended change makes clear that both *de facto* and *de jure* changes in ownership and control require Commission consent and advises licensees that a case-by-case determination will be made as to whether a given transaction requires consent, consistent with current § 22.39(a)(2). It also incorporates the policy set forth in current § 22.39(a)(1) that changes from minority ownership to 50% or greater ownership will always be deemed changes in control requiring Commission consent. Other minor revisions were incorporated in the recommendation, including the use of the defined terms "assignment of authorization" and "transfer of control" in lieu of lengthier phrases. *See also* comments on definition of "assignment of authorization" in proposed § 22.99.

§ 22.137(a)

NPRM: (a) *Application required.* The assignor must file an application for approval of assignment or transfer of control (FCC Form 490). In the case of involuntary assignment, such application must be filed within 30 days after the event causing the assignment. The assignee must file a report qualifying it as a common carrier (FCC Form 430) unless an accurate report is already on file with the Commission.

Recommendation:

Amend to read:

(a) *Application required.* The assignor or transferor and assignee or transferee must jointly file an application for consent to assignment of authorization or transfer of control on FCC Form 490. In the case of involuntary assignment, such application must be filed within 30 days after the event causing the assignment.

Discussion:

The assignor is not the only applicant in a Form 490 application; the assignor and assignee (or transferor and transferee) are both applicants. Furthermore, as discussed in the body of BellSouth's comments, because the assignee or transferee must demonstrate its qualifications and disclose real parties in interest pursuant to other rules, there is no need for filing a Form 430 qualification report.

§ 22.137(b)

NPRM: *Notification of completion.* Assignments must be completed within 60 days of FCC approval. . .

Recommendation:

Amend to specify 90 days.

Discussion:

The time for consummating an assignment of license or transfer of control should be extended to 90 days. Extending the consummation period will avoid unnecessary letter filings and conserve Commission resources. In many instances, Commission consent to the transfer of control or assignment of authorization takes approximately two weeks to appear on public notice. Within thirty days thereafter, the Commission may set aside the grant on reconsideration. Thus, "finality" is not reached for approximately 45 days after grant. The proposed 60-day period leaves the parties approximately 15 days within which to consummate or file a letter requesting an extension of time. Allowing 90 days for consummation gives the parties approximately 45 days after a grant becomes final to consummate.

§ 22.137(c)(2)

NPRM: (2) Partial assignments must be completed within 60 days of FCC approval. . .

Recommendation:

Amend to specify 90 days.

Discussion:

See preceding comment.

§ 22.137(d)(3)

NPRM: [*Limitations.* The Commission may deny an application for assignment/transfer if, among others, "the authorization is for a commercial aviation system in the Air-ground Radiotelephone Service or an unserved area cellular system . . . and the system has not been constructed or operated, or has been operated for less than one year." This restriction extends to agreements to assign/transfer an authorization entered into "during the first year of operation, even if the assignment is to take place after the first year of operation." (*See* Proposed 22.137(d)(3)(i)). However, "the Commission may grant applications for *pro forma* assignments during the first year of operation." (*See* Proposed 22.137(d)(3)(ii)).]

Recommendation:

Subsection (d)(3) should be amended to read:

(3) Applications for assignment or the transfer of control of an authorization will be dismissed if the authorization is for a commercial aviation system in the Air-ground Radiotelephone Service and the application is filed prior to completion of construction and one year of operation (providing service to the public for one year). This restriction does not apply to applications filed for a *pro forma* assignment or transfer of control. Licensees must not enter into agreements (*e.g.*, option agreements or management contracts) to assign or transfer control of an authorization (except *pro forma*) before or during the first year of operation. (For restrictions applicable to the Cellular Radiotelephone Service, *see* § 22.943 and § 22.946).

Discussion:

The limitations made applicable to cellular unserved areas by this rule duplicate proposed § 22.943 "Limitations on assignment of cellular authorizations." For clarity, and to simplify the final rules adopted in this proceeding, BellSouth suggests that the Commission delete the reference to cellular in § 22.137(d) and cross reference proposed § 22.943 for rules applicable specifically to the Cellular Radiotelephone Service.

§ 22.137(e) (Proposed new subsection)

NPRM: Not present (new subsection)

Recommendation:

Add a new subsection (e) to the end of § 22.137 to read:

(e) *Changes in organizational structure.* A change in the organizational structure, intermediate ownership or form of ownership of a licensee, without any change in ultimate ownership or control, shall not be deemed an assignment or transfer of control. When any such change occurs, the controlling entity must file a letter notification with the Commission, within 30 days of any such change, identifying those Part 22 licensees or permittees and station call signs affected by the change. Separate copies of this letter notification shall be included for association with each station file.

Discussion:

See discussion in the body of BellSouth's comments.

§ 22.137(f) (Proposed new subsection)

NPRM: Not present (new subsection)

Recommendation:

Add new subsection (f) at the end of § 22.137 to read:

(f) *Pro forma assignments and transfers of control.*
Pro forma assignments and transfers of control shall be governed by this rule section. A single application (FCC Form 490) may be filed listing multiple licensees and station call signs for all *pro forma* transfers of control and assignments of Part 22 authorizations. Applications must be accompanied by the appropriate fee multiple for each call sign covered by the application. Extra copies of the application must be included for each call sign for association with the relevant station file. Applications (FCC Form 490) filed pursuant to this section are deemed granted upon filing, subject to Commission reconsideration (*see* § 1.108); and the parties to the application may consummate upon filing provided that:

(1) there is no substantial change in ownership or control; and

(2) the Commission has previously found the controlling party or parties to be qualified to hold a Commission authorization.

Discussion:

See discussion in the body of BellSouth's comments.

§ 22.142 Commencement of service; notification requirement.

NPRM: (b) *Notification requirement.* Licensees must notify the Commission (FCC Form 489) of commencement of service to the public. The notification must be mailed no later than 15 days after service begins.

Recommendation:

Adopt without change.

Discussion:

The proposed rule provides carriers with needed flexibility. It will allow carriers to provide service to the public without delay, yet ensure that the Commission receives notification on a timely basis.

§ 22.143(e) Construction prior to grant of application.

NPRM: [(e) *Notification to stop.* The section enables the Commission to notify an applicant, orally or in writing, that pre-authorization construction may not begin or, if begun, that construction must cease.]

Recommendation:

Add the phrase "(followed by written confirmation)" after the word "orally". BellSouth also notes that subsection (d) was omitted. Accordingly, all subsections should be renumbered.

Discussion:

BellSouth submits that written confirmation will ensure that applicants have documentation to confirm oral instructions from the Commission. This may be necessary in the event of subscriber complaints.

§ 22.144 Termination of authorizations.

NPRM: [The proposed section lists five ways, other than revocation, that a Public Mobile Services authorization is terminated. With one exception, authorizations automatically terminate without specific Commission action.]

Discussion:

Bellsouth supports the automatic termination of authorizations without specific Commission action, except where good cause is shown and a request for extension of time is timely filed. Under the current rules, Commission action (including public notice) is required to terminate an authorization. As a result, potential applicants must wait for the Commission to terminate an authorization before applying for the unused spectrum. Automatic termination will enable entities to apply for assigned but unused frequencies prior to deletion from the FCC station files, consistent with the proposed finder's preference procedure (*see* proposed §22.167).

§ 22.147(a) Authorization conditions.

NPRM: [This proposed section would condition authorizations granted after January 1, 1993 "to prevent actual interference resulting from operation of stations authorized in reliance upon technical exhibits that contain errors or omissions. . . ."]

Recommendation/Discussion:

BellSouth is concerned that processing applications without verification of the technical exhibits in the applications, with grants being conditioned on non-interference, will result in considerable uncertainty as to the status of licenses. BellSouth recommends that the rule be deleted. Where actual interference occurs, licensees so notified can undertake the modifications needed to prevent interference caused by erroneous technical exhibits without conditioning their licenses. Where necessary, the Commission may exercise its authority pursuant to Section 316 of the Communications Act to modify a license to remove interference.

In the event that the Commission retains proposed § 22.147, BellSouth suggests the following change:

NPRM: This authorization is subject to the condition that, if actual interference occurs as a result of operation . . . the Commission may suspend the operation of such facilities, in whole or in part, as necessary to eliminate the interference, without affording the licensee an opportunity for hearing.

Recommendation:

This authorization is subject to the condition that, if actual interference occurs as a result of operation . . . the Commission may require the applicant to eliminate all interference, or the Commission may suspend the operation of such facilities, in whole or in part, as necessary to eliminate the interference, without affording the licensee an opportunity for hearing.

Discussion:

Requiring applicants to resolve their interference problems would serve the public interest, one of the FCC's mandates under the Communications Act of 1934, as amended, because the applicant could continue serving the public without interruption.

§ 22.150(d)(3)

NPRM: (d) The 30-day period begins on the date of receipt of the notification by the party being notified. If the notification is by mail, this date may be ascertained by . . . (3) A conservative estimate of the time required for the mail to reach its destination. . . .

Recommendation:

Change "A conservative estimate of the time required for the mail to reach its destination" to "Presuming the party received the notification three days after it was mailed."

Discussion:

This change would be consistent with the FCC's long established mailbox rule, codified at 47 C.F.R. § 1.4 (h), which allows applicants to add three additional days to the time for filing a responsive pleading when the filing period is 10 days or less.

§ 22.159(c)

NPRM: In Dade and Broward Counties, Florida, average terrain elevation is assumed to be 3 meters (10 feet).

Recommendation:

Change "is assumed" to "may be presumed."

Discussion:

Proposed Section 22.159 (c) states that average terrain elevation is assumed to be 10 feet in Dade and Broward Counties, Florida. This is consistent with the current rules. However, BellSouth has received Commission permission to use computer-generated elevation which is based on actual elevation, rather than the theoretical 10 feet. Thus, the rule should be changed to reflect current practice.

Discussion:

As discussed in its comments, BellSouth suggests that cellular channels be excluded from this section.

§ 22.163 Minor modifications to existing stations.
§ 22.165 Additional transmitters for existing systems.

NPRM: [The NPRM proposes two rules to govern permissive changes or minor modifications for the Public Mobile Service. The two proposed rules are largely duplicative and are discussed below in the context of combining them into a single rule.]

Recommendation.

Sections 22.163 and 22.165 should be combined and retitled as follows:

§ 22.163 Minor modifications and permissive changes to existing systems.

(a) Licensees may make modifications to existing facilities and add additional transmitters at different locations subject to the applicable rules

governing the respective services governed by this Part without obtaining prior Commission approval, provided:

(1) *Classification as minor.* The modifications or the addition of a transmitter must be minor. Modifications to a facility are minor if an application filed solely for the purpose of obtaining authorization for such modifications would be classified as minor in accordance with § 22.123.

(2) *Locations near Canadian Border.* The facilities to be modified or additional transmitters must not be located between Line A or Line C and the US-Canada border. This subsection does not apply to facilities or transmitters authorized in the Cellular Radiotelephone Service.

(3) *Antenna structure clearance required.* For any construction or alteration that would exceed the requirements of Section 17.7 of this chapter, licensees must notify the appropriate Federal Aviation Administration (FAA Form 7460-1) and file a request for antenna height clearance and obstruction marking and lighting specifications (FCC Form 854) with the FCC, Field Operations Bureau ("FOB") Antenna Survey Branch ("ASB"). Where applicable, FAA and ASB clearance must be obtained prior to making any modification or constructing any transmitter.

(4) *Provision of information upon request.* Licensees must supply administrative or technical information concerning the subject facilities upon request by the Commission.

(b) Licensees making minor modifications or adding transmitters pursuant to this section may file applications (FCC Form 489) at any time subsequent to making such modifications or placing such transmitters in service, to record the modifications in the Commission's station files and for the purpose of gaining interference protection.

Discussion:

Based on BellSouth's proposed revision to § 22.123, classifying filings as major or minor, it appears that proposed § 22.163 and § 22.165 can be combined into a single section. If the Commission adopts BellSouth's recommendations regarding these rule sections, a licensee proposing to make changes to its existing system (*e.g.*, modification or adding additional transmitters) would first determine if the proposed changed would be classified as major under proposed § 22.123. If the change was not classified as major, the licensee would then move to proposed § 22.163 for any additional requirements applicable to minor modifications subject to the rules governing the particular mobile service. BellSouth believes that these changes not only simplify the rules governing major and minor, but also gives carriers an objective standard for classifying filings.

For the reasons stated in its comments, BellSouth recommends that the Commission allow licensees the option to file an FCC Form 489 to protect its facilities.

§ 22.167 Applications for assigned but unused channels.

NPRM:

> (c) Procedures. The Commission identifies finder's applications as such on the Public Notice listing them as tentatively acceptable for filing. The Commission may also conduct an investigation to verify that the authorization for the identified facilities has terminated.

Recommendation:

> (c) Procedures. The Commission identifies finder's applications as such on the Public Notice listing them as tentatively acceptable for filing. The Commission shall conduct an investigation, prior to granting a finder's application, to verify that the authorization for the identified facilities has terminated. *See* §§ 22.144, 22.317. The existing licensee, consistent with Section 316 of the Communications Act of 1934, shall be provided notice of the investigation and an opportunity to respond to the alleged termination.

Discussion:

BellSouth recommends that existing licensees be given notice and a formal opportunity to respond prior to the grant of any finder's application.

§ 22.167(d)

NPRM: Not present (Recommended new subsection]

Recommendation:

> (d) Exception. Due to the unique nature in which channels are assigned to cellular providers, finder's applications will not be accepted for channels assigned to cellular service.

§ 22.307 Operation during emergency.

NPRM: [The proposed rule sets forth procedures for temporarily providing emergency communication services in the wake of a disaster.]

Recommendation:

> Add new subsection (c) to read:
>
> (c) *Provision of emergency service to the government.* Cellular carriers under contract to provide private communications service to the government in disaster areas shall be eligible to apply for special temporary authority ("STA")

to construct and operate temporary facilities in any cellular market provided that:

(1) The service is provided at the request of the government in response to a national disaster, pursuant to a contract entered into prior to the disaster;

(2) The applicant for the STA under this section will not provide commercial service within the market affected by the disaster;

(3) The licensee in the affected market is contacted and has no objection to the proposed operation of the temporary facility;

(4) In the event interference is discovered, the applicant will immediately eliminate all interference to affected licensee.

All authorizations issued pursuant to this section will be issued in the name of the applicant and, absent a specific request to the contrary, not in the name of the licensee in the affected market.

Discussion:

Based on its experience with Hurricane Andrew, BellSouth suggests that a new subsection be added to § 22.307. This new subsection would allow carriers, under contract to provide private communications service to the government in disaster areas, to apply for special temporary authority ("STA") in cellular markets where they are not licensed carriers.

While STAs have been issued to provide this type of service, current rules are unclear on whether a carrier may provide such communications unless it is a licensed in the particular market. Further, when STAs have been issued for this service, there has been confusion as to whether the STA issues to the provider of the service, the licensee in the affected market, or jointly. BellSouth submits that, provided the conditions in the proposed subsection are met, the STA should issue to the provider of the service. The licensee in the affected market should not be responsible for the actions of the emergency service provider. It would be unfortunate if a licensee had to weigh its potential liability as the STA holder against the public interest in allowing a carrier to provide emergency communications to the government.

§ 22.317 Discontinuance of station operation.

NPRM: If the operation of a Public Mobile Services station is permanently discontinued, the licensee shall send the authorization for cancellation . . . For purposes of this section, any station that has not provided service to the public for 90 continuous days is considered to have been permanently discontinued. . . .

Recommendation:

Add, at the end of the section:

In addition, facilities which have subscribers and are capable of radio transmission are deemed to be in operation.

Discussion:

BellSouth urges the Commission to acknowledge that demand-based facilities may, in some situations, be "in operation" even if there are no radio transmissions from the facilities. For example, a paging system transmits only when customers are paged. It is conceivable that, for an extended period of time, none of a licensee's subscribers actually sends a page. This facility should be deemed operational because it has been constructed, is prepared to transmit as soon as a page is initiated, and has subscribers.

22.323 Incidental communications services.

NPRM: (d) the licensee notifies the Commission by letter before providing the incidental services. . . .

Recommendation:

Delete subsection (d).

Discussion:

Requiring notification regarding incidental services ignores marketplace realities for such services and serves no practical purpose. All such fixed services are clearly incidental to carriers' primary service — mobile communications. Until carriers begin building their facilities for something other than mobile service, the Commission should assume that fixed services are incidental. Further, in certain instances, it is impossible for carriers to comply with the prior notification requirement. There are fixed devices on the market which permit consumers to purchase and begin service without the carrier's knowledge. It is not in the public interest for the consumer to wait for service until the order is communicated to the carriers legal department and the necessary notification letter prepared and filed. By deleting the subsection, incidental services will be more readily available to the public.

§ 22.507 Number of transmitters per station.

NPRM: (a) Unless otherwise allowed in this subpart, each station must comprise at least one separate and dedicated transmitter, providing service to the public, for each transmitting channel at each location where that channel is assigned for use by that station.

Recommendation:

Delete subsection (a).

Discussion:

For the reasons stated in its comments, BellSouth recommends that the Commission delete subsection (a) of the proposed rule and permit use of multi-frequency transmitters.

§ 22.509 Procedure for mutually exclusive applications.

NPRM: [The NPRM proposes to adopt a "first-come, first-served" approach to processing mutually exclusive applications in the Paging, Radiotelephone and Rural Radio Services. The proposed "first-come, first-served" rule is substantially different from the existing cut-off procedures. Adoption of the rule would eliminate the 60-day filing window during which mutually exclusive applications can be filed. Assuming an application is acceptable for filing, the first filed application under the proposed rule would be granted, and all other applications would be dismissed. In the event that two mutually exclusive applications are filed on the same day, the Commission will conduct a lottery.]

Recommendation:

Modify subsections (a) and (b) and add subsection (e).

(a) First Filed. Except as provided in paragraphs (b), (d), and (e), when. . . .

(b) Same filing date. [After the first sentence, add] Applications that satisfy the criteria set forth at paragraph (e) of this section will also be included in the random selection process.

* * *

(e) Cut-Off Period. Once an application is accepted for filing in the Paging and Radiotelephone Service or the Rural Radiotelephone Service, mutually exclusive applications will be accepted from co-channel licensees within 250 km for a period of 30 days following public notice. Any such application filed during this filing window will be deemed filed on the same date as the first-filed application and subject to subsection (b).

Discussion:

The proposed rule will force existing licensees to file applications as early as possible to ensure frequency availability. BellSouth recommends modification to the proposed rule to protect existing co-channel licensees' rights to expand their systems to satisfy customer

demand for service in an orderly manner. By limiting eligibility to existing co-channel licensees within a given geographical area, the Commission's goal to eliminate "strike" applications and streamline its processes will be served.

§ 22.569 Additional channel policies.

NPRM: [The rules in this section permit a carrier to apply for and obtain no more than two channels in an area per application cycle.]

Recommendation:

Adopt rule as proposed.

Discussion:

BellSouth strongly supports the proposed rule, which eliminates the need for burdensome traffic loading studies while still preventing frequency warehousing.

§ 22.907 Coordination of channel usage.

NPRM: (b) If technical problems are addressed by an agreement or operating arrangement between the licensees that would require procedures to be taken to reduce the likelihood of intersystem interference or would result in a reduction of quality or capacity of either system, the licensees must notify the Commission.

Recommendation:

Amend to read:

(b) If technical problems are addressed by an agreement or operating arrangement between the licensees that would result in a reduction of quality or capacity of either system, the licensees must notify the Commission.

Discussion:

The proposed rule would require licensees to notify the Commission whenever technical problems are resolved by agreement. BellSouth recommends amending the rule to clarify that licensees are only required to notify the Commission when agreements to resolve technical problems have been reached which result in a reduction of quality or capacity of either system. Such a policy would encourage settlement of technical problems that do not affect service to the public.

§ 22.911 Cellular geographic service area.

NPRM: . . . The CGSA is the area within which cellular systems are entitled to protection and within which adverse effects for the purpose of determining whether a petitioner has standing are recognized. Licensees of the first cellular system on each channel block in MSAs 1 through 90 must maintain a CGSA that covers 75% of the geographic area of the MSA. Licensees of the first cellular system on each channel block in MSAs 91 through 305 must maintain a CGSA that covers 75% of the geographic area or population of the MSA.

Recommendation:

Delete all text after the word "recognized."

Discussion:

The Commission should eliminate the mention of 75% coverage of population or geographic area for MSA licensees. The coverage requirement was previously eliminated when the Commission adopted the *Second Report and Order*, 7 FCC Rcd. 2449 (1992), in the Unserved Area proceeding which redefined CGSA to be the composite 32 dBu contours of a cellular system. *See* 47 C.F.R. § 22.903(a). The purposes of the 75% coverage requirements were to "ensure that applicants plan to operate systems large enough to substantially cover the cellular market for which they will have exclusive rights," and "ensure that licensees build facilities that provide service in a substantial portion of the area within which they are protected from interference and competing systems." *Second Report and Order*, 7 FCC Rcd. at 2451. The Commission alleviated these concerns by defining CGSA as the composite, outermost 32 dBu contours of a cellular system in the *Second Report and Order*. Since no substantial changes in CGSA determination are proposed herein, the previously deleted 75% coverage rules should not be reintroduced.

§ 22.911(b)

NPRM: (b) *Alternative CGSA determination* . . . For the purpose of such submission, cellular service is considered to be provided where the predicted or measured median field strength equals or exceeds 32 dBuV/m. . . .

Recommendation:

Amend to read as follows:

(b) *Alternative CGSA determination* . . . For the purpose of such submission, cellular service is considered to be provided where the predicted or measured

median field strength equals or exceeds 32 dBuV/m. Further, service within dead spots is presumed. *See* § 22.99.

Discussion:

The proposed rule should be clarified to make clear that, consistent with § 22.99, service to dead spots is presumed.

§ 22.911(c)(1) Cellular geographic service area. . . .

NPRM: (c) *CGSA extension areas.* * * *

(1) During the five year fill-in period of the system in the MSA or RSA containing the extension, the licensees of systems on the same channel block in adjacent MSAs or RSAs may agree that the portion of the service area of one system that extends into unserved area in the other system's MSA or RSA is part of the CGSA of the former system.

Recommendation:

Amend to read:

(1) During the five year fill-in period of the system in the MSA or RSA containing the extension, the licensees of systems on the same channel block in adjacent MSAs or RSAs may agree that the portion of the service area of one system that extends into the other system's MSA or RSA is part of the CGSA of the former system, provided that the CGSAs of the two systems do not overlap.

Discussion:

The proposed change is intended to clarify, consistent with the proposed definition for "unserved areas" (§ 22.99 and § 22.911(d)) that unserved areas are defined upon expiration of the five year fill-in period.

§ 22.911(d)

NPRM: (d) *Unserved areas.* Unserved areas are areas outside of all existing CGSAs (on either of the channel blocks), to which the Communications Act of 1934, as amended, is applicable.

Recommendation:

(d) *Unserved areas.* Unserved areas are areas within the United States, its territories and possessions, outside of all existing CGSAs in markets where the five year fill-in period has expired with respect to a particular channel block.

Discussion:

The proposed definition should clarify the definition of unserved areas as used in the Cellular Radiotelephone service.

§ 22.912(a) Service area boundary extensions.

NPRM: (a) *Contract extensions.* Licensees of the first authorized cellular systems on the same channel block in adjacent cellular markets may agree to allow service area boundary extensions into their markets during the five year fill-in period of the market into which the service area extends.

Recommendation:

Amend to read:

(a) *Service area boundary extensions.* The licensees of the initial cellular systems authorized on a given channel block in two or more adjacent cellular markets may propose contour extensions as calculated in accordance with § 22.911 which extend beyond the cellular market boundary, consistent with the following provisions:

(1) *De minimis extensions.* Service area boundaries may extend into adjacent MSAs or RSAs if such extensions are *de minimis* and are demonstrably unavoidable for technical reasons of sound engineering design. Paragraph (b) of this section sets forth additional requirements applicable only to unserved area systems.

(2) *Extensions by agreement.* The licensees of the initial cellular systems authorized on a given frequency block in two or more adjacent MSAs or RSAs may agree to allow service area boundary extensions into their MSAs or RSAs during the five year fill-in period of the MSA or RSA into which the service area extends.

Discussion:

Proposed subsection (a) fails to recognize situations in which existing licensees file applications proposing *de minimis* extensions into an adjacent market for technical reasons, irregular terrain, *etc.* These extensions are not always made pursuant to agreements

with adjacent licensees, but nevertheless should be granted upon making the necessary *de minimis* extension showing. Thus, BellSouth recommends that the Commission revise § 22.912 consistent with the rule adopted in the unserved area proceeding (47 C.F.R. § 22.903(d)) (with minor editorial changes added for clarification) which recognized the distinction between *de minimis* contour extensions and contract extensions made pursuant to agreement. Further, BellSouth has deleted the use of the term "contract" and replaced it with the term "agreement" to allow for less formal understandings between adjacent licensees.

§ 22.919 Electronic serial numbers.

NPRM: [The proposed rule would require each mobile transmitter to have a unique Electronic Serial Number.]

Recommendation:

Amend by adding the following subsection:

(d) This section does not apply to equipment type-accepted before January 1, 1993.

Discussion:

While BellSouth supports the anti-fraud measures proposed by this section, the proposed rule should exempt equipment type-accepted before January 1, 1993. The cost savings of such anti-fraud measures would be undercut by requiring cellular licensees and their subscribers to reconfigure mobile equipment at substantial cost.

§ 22.923 Cellular system configuration.

NPRM: Mobile stations communicate with and through base stations only.

Recommendation:

Amend to read as follows:

Mobile stations communicate with and through base stations and cellular repeaters only.

Discussion:

Since the proposed rules do not specifically define the term "base station," proposed § 22.923 should be modified to clarify that the use of cellular repeaters is permissible.

§ 22.933 Cellular system compatibility specifications

NPRM: [The NPRM requires all equipment used in cellular radiotelephone service to be designed in compliance with the technical specifications for compatibility of mobile and base stations contained in OET Bulletin 53.]

Recommendation:

Amend by adding the following immediately after the last sentence.

Auxiliary services and alternative technologies authorized pursuant to § 22.901(d) are exempt from the OET Bulletin 53 compatibility specifications.

Discussion:

The proposed rule would unnecessarily limit flexibility in designing new technologies and implementing nonconventional technical systems in the cellular band by requiring that they conform to existing compatibility requirements. Restricting carriers to compatibility standards is contrary to the Commission's finding in the *Auxiliary Services Offerings Report and Order*, 3 FCC Rcd. 7033, 7039 (1988) —

> nonconventional technical systems can be allowed in a major portion of the cellular allocation without adverse impact on the goal of maintaining compatible cellular systems. We believe that each cellular operator will find it in its own self interest to ensure that compatible service continues to be provided to roamers and to its own local customers who continue to use conventional mobile equipment.

Further, proposed § 22.901 ensures that cellular service, compatible with the OET standard, will continue to be provided when carriers choose to "use alternative cellular technologies and/or provide auxiliary common carrier services. . . ." *See* Proposed § 22.901(d)(1), (2). *See also Auxiliary Services Report and Order*, 3 FCC Rcd. at 7039 ("A cellular operator choosing to implement advanced cellular technology will be required to use base stations that will provide conventional cellular services as well as advanced cellular service. . . .") Thus, providing carriers continue to make cellular service available to the public in compliance with proposed § 22.901, licensees should be permitted to experiment with technologies and provide services which do not conform to the OET Bulletin.

§ 22.935 Procedures for comparative renewal proceedings.

NPRM: [Proposed § 22.935 revises current § 22.916(b)(5)-(8) of the rules (procedures for evaluating mutually exclusive cellular applications in comparative hearings) and makes it applicable to comparative hearings for cellular renewal

applications. *See NPRM*, 7 FCC Rcd. at 3754 (Appendix C). The procedures for evaluating and processing mutually exclusive applications adopted in CC Docket No. 90-358 (*Cellular Renewal Proceeding*, 7 FCC Rcd. 719 (1992)) are not incorporated.]

Discussion:

In CC Docket 90-358 (*Cellular Renewal Proceeding*, 7 FCC Rcd. 719 (1992), petitions for recon. pending)), the Commission adopted "specific rules governing the conduct of comparative cellular renewal proceedings." *See* CC Docket No. 90-358, 57 Fed. Reg. 3026 (January 27, 1992). *See also NPRM*, 7 FCC Rcd. at 3658. Proposed § 22.935 fails to incorporate these rules and instead revises existing § 22.916, to make it applicable to cellular renewals.

BellSouth has filed comments in the renewal proceeding and feels it is inappropriate to comment on proposed § 22.935 until all issues raised in Docket 90-358 have been resolved.

§ 22.937 Demonstration of financial qualifications.

NPRM: [Applicants for new cellular systems, including applicants for assignments and transfers, must include either a market-specific firm financial commitment or a showing of available financial resources sufficient to construct and operate for one year.]

Recommendation.

If the Commission did not intend to substantially change the nature of the costs that an assignee or transferee must be able to cover, the introductory paragraph should be revised to read:

Except as provided in paragraph (g) of this section, each applicant for a new cellular system must demonstrate that it has, at the time the application(s) is filed, either a separate market-specific firm financial commitment or available financial resources sufficient to construct and operate for one year the proposed cellular system. Each applicant for assignment of license or consent to transfer of control must demonstrate that the proposed assignee or transferee has, at the time the application is filed, either a separate market-specific firm financial commitment or available financial resources sufficient to acquire the cellular system and complete consummation. Where the transfer or assignment involves an unconstructed cellular system, the assignee or transferee must also demonstrate that its financial commitment or available resources is/are sufficient to construct and operate the cellular system for one year.